

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 351
97TH GENERAL ASSEMBLY

Reported from the Committee on Veterans' Affairs and Health, May 2, 2013, with recommendation that the Senate Committee Substitute do pass.

0682S.09C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 191.227, 197.080, and 197.100, RSMo, and to enact in lieu thereof four new sections relating to health care providers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 191.227, 197.080, and 197.100, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 191.227,
3 197.080, 197.100, and 1, to read as follows:

191.227. 1. All physicians, chiropractors, hospitals, dentists, and other
2 duly licensed practitioners in this state, herein called "providers", shall, upon
3 written request of a patient, or guardian or legally authorized representative of
4 a patient, furnish a copy of his or her record of that patient's health history and
5 treatment rendered to the person submitting a written request, except that such
6 right shall be limited to access consistent with the patient's condition and sound
7 therapeutic treatment as determined by the provider. Beginning August 28,
8 1994, such record shall be furnished within a reasonable time of the receipt of the
9 request therefor and upon payment of a fee as provided in this section.

10 2. Health care providers may condition the furnishing of the patient's
11 health care records to the patient, the patient's authorized representative or any
12 other person or entity authorized by law to obtain or reproduce such records upon
13 payment of a fee for:

14 (1) (a) [Copying] **Search and retrieval**, in an amount not more than
15 [twenty-one] **twenty-two** dollars and [thirty-six cents] **eighty-two cents** plus
16 **copying in the amount of [fifty] fifty-three** cents per page for the cost of

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 supplies and labor plus, if the health care provider has contracted for off-site
18 records storage and management, any additional labor costs of outside storage
19 retrieval, not to exceed [twenty] **twenty-one dollars and thirty-six cents**, as
20 adjusted annually pursuant to subsection 5 of this section; or

21 (b) [If the health care provider stores records in an electronic or digital
22 format, and provides the requested records and affidavit, if requested, in an
23 electronic or digital format, not more than five dollars plus fifty cents per page
24 or twenty-five dollars total, whichever is less] **The records shall be furnished**
25 **electronically upon payment of the search, retrieval, and copying fees**
26 **set under this section at the time of the request or one hundred dollars**
27 **total, whichever is less, if such person:**

28 a. **Requests health records to be delivered electronically in a**
29 **format of the health care provider's choice;**

30 b. **The health care provider stores such records completely in an**
31 **electronic health record; and**

32 c. **The health care provider is capable of providing the requested**
33 **records and affidavit, if requested, in an electronic format;**

34 (2) Postage, to include packaging and delivery cost; and

35 (3) Notary fee, not to exceed two dollars, if requested.

36 3. Notwithstanding provisions of this section to the contrary, providers
37 may charge for the reasonable cost of all duplications of health care record
38 material or information which cannot routinely be copied or duplicated on a
39 standard commercial photocopy machine.

40 4. The transfer of the patient's record done in good faith shall not render
41 the provider liable to the patient or any other person for any consequences which
42 resulted or may result from disclosure of the patient's record as required by this
43 section.

44 5. Effective February first of each year, the fees listed in subsection 2 of
45 this section shall be increased or decreased annually based on the annual
46 percentage change in the unadjusted, U.S. city average, annual average inflation
47 rate of the medical care component of the Consumer Price Index for All Urban
48 Consumers (CPI-U). The current reference base of the index, as published by the
49 Bureau of Labor Statistics of the United States Department of Labor, shall be
50 used as the reference base. For purposes of this subsection, the annual average
51 inflation rate shall be based on a twelve-month calendar year beginning in
52 January and ending in December of each preceding calendar year. The

53 department of health and senior services shall report the annual adjustment and
54 the adjusted fees authorized in this section on the department's internet website
55 by February first of each year.

197.080. 1. The department of health and senior services, with the advice
2 of the state advisory council and pursuant to the provisions of this section and
3 chapter 536, shall adopt, amend, promulgate and enforce such rules, regulations
4 and standards with respect to all hospitals or different types of hospitals to be
5 licensed hereunder as may be designed to further the accomplishment of the
6 purposes of this law in promoting safe and adequate treatment of individuals in
7 hospitals in the interest of public health, safety and welfare. No rule or portion
8 of a rule promulgated under the authority of sections 197.010 to 197.280 shall
9 become effective unless it has been promulgated pursuant to the provisions of
10 section 536.024.

11 **2. The department shall review and revise regulations governing**
12 **hospital licensure and enforcement to promote hospital and regulatory**
13 **efficiencies and eliminate duplicative regulations and inspections by**
14 **or on behalf of state agencies and the Centers for Medicare and**
15 **Medicaid Services (CMS). The hospital licensure regulations adopted**
16 **under this section shall incorporate standards which shall include, but**
17 **not be limited to, the following:**

18 **(1) Each citation or finding of a regulatory deficiency shall refer**
19 **to the specific written regulation, any state associated written**
20 **interpretive guidance developed by the department and any publicly**
21 **available, professionally recognized standards of care that are the basis**
22 **of the citation or finding;**

23 **(2) Subject to appropriations, the department shall ensure that**
24 **its hospital licensure regulatory standards are consistent with and do**
25 **not contradict the CMS Conditions of Participation (COP) and**
26 **associated interpretive guidance. However, this shall not preclude the**
27 **department from enforcing standards produced by the department**
28 **which exceed the federal CMS' COP and associated interpretive**
29 **guidance, so long as such standards produced by the department**
30 **promote a higher degree of patient safety and do not contradict the**
31 **federal CMS' COP and associated interpretive guidance;**

32 **(3) The department shall establish and publish guidelines for**
33 **complaint investigation, including but not limited to:**

34 **(a) The department's process for reviewing and determining**
35 **which complaints warrant an onsite investigation based on a**
36 **preliminary review of available information from the complainant,**
37 **other appropriate sources, and when not prohibited by CMS, the**
38 **hospital. For purposes of providing hospitals with information**
39 **necessary to improve processes and patient care, the number and**
40 **nature of complaints filed and the recommended actions by the**
41 **department and, as appropriate CMS, shall be disclosed upon request**
42 **to hospitals so long as the otherwise confidential identity of the**
43 **complainant or the patient for whom the complaint was filed is not**
44 **disclosed;**

45 **(b) A departmental investigation of a complaint shall be focused**
46 **on the specific regulatory standard and departmental written**
47 **interpretive guidance and publicly available professionally recognized**
48 **standard of care related to the complaint. During the course of any**
49 **complaint investigation, the department shall cite any serious and**
50 **immediate threat discovered that may potentially jeopardize the health**
51 **and safety of patients;**

52 **(c) A hospital shall be provided with a report of all complaints**
53 **made against the hospital. Such report shall include the nature of the**
54 **complaint, the date of the complaint, the department conclusions**
55 **regarding the complaint, the number of investigators and days of**
56 **investigation resulting from each complaint;**

57 **(4) Hospitals and hospital personnel shall have the opportunity**
58 **to participate in annual continuing training sessions when such**
59 **training is provided to state licensure surveyors with prior approval**
60 **from the department director and CMS when appropriate. Hospitals**
61 **and hospital personnel shall assume all costs associated with**
62 **facilitating the training sessions and use of curriculum materials,**
63 **including but not limited to the location for training, food, and printing**
64 **costs;**

65 **(5) Time lines for the department to provide responses to**
66 **hospitals regarding the status and outcome of pending investigations**
67 **and regulatory actions and questions about interpretations of**
68 **regulations shall be identical to, to the extent practicable, the time**
69 **lines established for the federal hospital certification and enforcement**
70 **system in the CMS State Operations Manual, as amended. These time**

71 lines shall be the guide for the department to follow. Every reasonable
72 attempt shall be made to meet the time lines. However, failure to meet
73 the established time lines shall in no way prevent the department from
74 performing any necessary inspections to ensure the health and safety
75 of patients.

76 3. Any rule or portion of a rule, as that term is defined in section
77 536.010, that is created under the authority delegated in this section
78 shall become effective only if it complies with and is subject to all of
79 the provisions of chapter 536 and, if applicable, section 536.028. This
80 section and chapter 536 are nonseverable and if any of the powers
81 vested with the general assembly pursuant to chapter 536 to review, to
82 delay the effective date, or to disapprove and annul a rule are
83 subsequently held unconstitutional, then the grant of rulemaking
84 authority and any rule proposed or adopted after August 28, 2013, shall
85 be invalid and void.

197.100. 1. Any provision of chapter 198 and chapter 338 to the contrary
2 notwithstanding, the department of health and senior services shall have sole
3 authority, and responsibility for inspection and licensure of hospitals in this state
4 including, but not limited to all parts, services, functions, support functions and
5 activities which contribute directly or indirectly to patient care of any kind
6 whatsoever. The department of health and senior services shall annually inspect
7 each licensed hospital and shall make any other inspections and investigations
8 as it deems necessary for good cause shown. The department of health and senior
9 services shall accept reports of hospital inspections from governmental agencies
10 [and recognized accrediting organizations in whole or in part for licensure
11 purposes if:

12 (1) The inspection is comparable to an inspection performed by the
13 department of health and senior services;

14 (2) The hospital meets minimum licensure standards; and

15 (3) the inspection was conducted within one year of the date of license
16 renewal], the joint commission, and the American Osteopathic
17 Association Healthcare Facilities Accreditation Program, provided the
18 accreditation inspection was conducted within one year of the date of
19 license renewal. Prior to granting acceptance of any other accrediting
20 organization reports in lieu of the required licensure survey, the
21 accrediting organization's survey process must be deemed appropriate

22 **and found to be comparable to the department's licensure survey. It**
23 **shall be the accrediting organization's responsibility to provide the**
24 **department any and all information necessary to determine if the**
25 **accrediting organization's survey process is comparable and fully meets**
26 **the intent of the licensure regulations.** The department of health and senior
27 services shall attempt to schedule inspections and evaluations required by this
28 section so as not to cause a hospital to be subject to more than one inspection in
29 any twelve-month period from the department of health and senior services or
30 any agency or accreditation organization the reports of which are accepted for
31 licensure purposes pursuant to this section, except for good cause shown.

32 2. Other provisions of law to the contrary notwithstanding, the
33 department of health and senior services shall be the only state agency to
34 determine life safety and building codes for hospitals defined or licensed pursuant
35 to the provisions of this chapter, including but not limited to sprinkler systems,
36 smoke detection devices and other fire safety related matters so long as any new
37 standards shall apply only to new construction.

Section 1. 1. The department of health and senior services shall
2 **post on its website information regarding investigations of complaints**
3 **against hospitals. The posting of such information shall comply with**
4 **all of the following requirements:**

5 (1) **Complaint data shall not be posted unless the complaint has**
6 **been substantiated by investigation by departmental employees to**
7 **require a statement of deficiency;**

8 (2) **The posting shall include the hospital's plan of correction**
9 **accepted by departmental officials;**

10 (3) **The posting shall include the dates and specific findings of**
11 **the departmental investigation;**

12 (4) **The posting shall list or include a link to each facility's**
13 **annualized rate of substantiated complaints per patient day;**

14 (5) **The posting shall display the complaint investigation data so**
15 **as to provide for peer group comparisons of:**

16 (a) **Psychiatric hospitals or psychiatric units within hospitals;**

17 (b) **Long-term acute care hospitals as defined by 42 CFR**
18 **412.23(e);**

19 (c) **Inpatient rehabilitation facilities or units meeting the**
20 **requirements of 42 CFR 412.29; and**

21 (6) **Time lines for posting such information shall be consistent**

22 with the CMS State Operations Manual, as amended.

23 2. This section shall not be construed to require or permit the
24 posting of information that would violate state or federal laws or
25 regulations governing the confidentiality of patient data or medical
26 records or information protected under subsection 4 of section 537.035.

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